IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.666 OF 2007

M/s.Garud Enterprises ...Petitioner

Versus

Chuda Sama Samaj Kalyan Sanstha & Anr. ...Respondents

Shri O.S.Kutty for the Petitioner.
Shri S.K.Dure for the Respondent No.1.

CORAM : ABHAY S.OKA, J.
DATED : FEBRUARY 22, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The challenge in this Writ Petition under Article 227 of the Constitution of India is to order dated 09th January, 2007. The first Respondent is the original Plaintiff and the present Petitioner is the original second Defendant. The Petitioner did not file written statement within time and therefore, an order was passed by the learned Trial Judge for proceeding with the suit without written statement. An application was made by the Petitioner for setting aside the exparte order and for taking the written statement on record. The said Application has been rejected by the impugned order.

2. The learned counsel for the Petitioner submitted that sufficient explanation for delay was offered by the

Petitioner in the Application and in the affidavit in support. He submitted that written statement was tendered alongwith the Application and the trial Court ought to have accepted the same. He submitted that the age of the sole proprietor of the Petitioner is 75. He pointed out that the sole proprietor of the Petitioner is an ex-serviceman. He submitted that the proprietor of the Petitioner had misplaced the relevant documents. The learned Advocate for the first Respondent opposed the Petition by submitting that there was no explanation whatsoever in the Application and therefore, the learned Trial Judge was justified in rejecting the Applications and passing the impugned order.

3. I have considered the submissions. I have perused the Applications at Exhibits 48 and 49 filed by the Petitioner. In paragraph Nos.1 to 3 of the Application for condonation of delay, the Petitioner has stated thus:

> "1. The Defendant No.2 abovenamed is senior citizen, aged 75 years and is an ex-serviceman. This Defendant received the summons from this Hon’ble Court in the above

matter. However, during that time this Defendant's residence cum office was under urgent repairs and renovation and all the records and documents were misplaced including the Court summons and the plaint copy.

2. This Defendant further submits that due to advanced age and accompanying sickness and forgetfulness, this defendant completely forgot about the pending case particularly in view of the fact that the entire documents were misplaced.

3. The Defendant No.2 submits that he has now only traced out the file and documents and therefore wish to file his say since he is a necessary party in the pending suit".

4. The present age of the proprietor of the Petitioner is 75 years. These are the factors which should have weighed by the trial Court while deciding the Applications. In my view, the trial Court ought to have permitted the Petitioner to file written statement. The first Respondent could have been compensated by

ordering payment of costs.

5. Hence, I pass the following order:

(i) The impugned order dated 09th January, 2007 passed by the learned Civil Judge, Junior Division, Vashi below Applications at Exhibits 48 and 49 in R.C.S.No.83 of 2004 is quashed and set aside.

(ii) The learned Trial Judge is directed to take the written statement of the Petitioner on record.

(iii) The Advocate for the Petitioner has handed over a demand draft in the sum of Rs.5,000/- drawn in favour of the first Respondent to the Advocate for the first Respondent by way of costs payable to the first Respondent. In view of this fact, I am not passing a separate order for payment of costs.

(iv) Petition is disposed of in above terms.

(v) Parties and concerned court to act upon an

authenticated copy of this order.

JUDGE